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6 Tel: (775) 786-2882  
7 Attorneys for Defendant/Third-Party Plaintiff  
8 ROCKY MOUNTAIN EGGS, INC.

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UNITED STATES DISTRICT COURT,  
DISTRICT OF NEVADA

HARRY WISEMAN,  
Plaintiff,

vs.

JACOBS ENTERTAINMENT, INC., a  
Delaware Corporation; ROCKY  
MOUNTAIN EGGS, INC., a California  
Corporation; SYSCO USA I, INC., a  
Delaware Corporation; DOES 1 through 10,  
inclusive; and ROE ENTITIES 1 through 10,  
inclusive,

Defendants.

Case No.: 3:19-cv-00153-RCJ-CBC

**DEFENDANT/THIRD-PARTY**  
**PLAINTIFF ROCKY MOUNTAIN EGGS,**  
**INC.'S NOTICE OF DISCOVERY**  
**DISPUTE**

Pursuant to the Court's 1/21/20 *Minutes of Proceedings* [Document 48] and the 6/15/20  
*Minutes of the Court* [Document 66], Defendant/Third-Party Plaintiff, ROCKY MOUNTAIN  
EGGS, INC., by and through its attorneys, Thorndal Armstrong Delk Balkenbush & Eisinger,  
hereby provides the following *Notice of Discovery Dispute*.

This motion is supported by the papers and pleadings on file in the above-referenced  
action and the attached Memorandum of Points and Authorities.

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1 DATED this 13<sup>th</sup> day of July, 2020.

2 THORNDAL ARMSTRONG  
3 DELK BALKENBUSH & EISINGER

4 By: /s/ Justin H. Pfrehm  
5 JUSTIN H. PFREHM, ESQ.  
6 Nevada Bar No. 7484  
7 6590 S. McCarran Blvd., Suite B  
8 Reno, Nevada 89509  
9 Attorneys for Defendant/Third-Party  
10 Plaintiff/Cross-Defendant  
11 ROCKY MOUNTAIN EGGS, INC.

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I. Statement of Discovery Dispute**

14 This is a personal injury lawsuit brought by Harry Wiseman wherein he alleges that he  
15 contracted a Salmonella-related illness after he dined at The Grill at Gold Dust West, located at  
16 1660 NV-225, Elko, Nevada, in March 2019. Specifically, Mr. Wiseman alleges that his illness  
17 was the result of him eating eggs at the restaurant. The named defendants and/or third-party  
18 defendants are the entities who were in the chain of distribution of the eggs. Mr. Wiseman's  
19 original Complaint was filed on 3/19/19 and a Second Amended Complaint was filed on 9/16/19.

20 On 11/21/19, Rocky Mountain Eggs, Inc. filed an Answer to Plaintiff's Second Amended  
21 Complaint and a Third-Party Complaint against Shepherd & Sons Poultry Farm, which was the  
22 entity that processed and supplied the eggs which were allegedly the source of Mr. Wiseman's  
23 illness.

24 The parties held a FRCP 26 meeting and made their respective initial disclosures that are  
25 required by FRCP 26(a). While Shepherd's & Sons Poultry Farms, Inc.'s 2/19/20 initial  
26 disclosure contained the declarations to its relevant insurance policies, it did not disclose a  
27 complete copy of the policies. Additionally, several requests have been made to Shepherd's &  
28 Sons Poultry Farms, Inc. to supplement its initial disclosure with a complete copy of the  
insurance policy, but those requests have gone unanswered. *See Declaration of Justin Pfrehm*  
(Exh. 1)

Under FRCP 37(a) a party may compel another party's compliance with discovery "[i]f a party fails to make a disclosure required by Rule 26(a)...". Under FRCP 26(a), a party is required to make an initial disclosure which includes the following information:

(iv) for inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

FRCP 26(a)(1)(A)(iv)(emphasis added).

Here, Shepherd's & Sons Poultry Farm, Inc. has not disclosed a complete copy of the "Palomar Insurance Corporation" insurance policies (primary and excess) referenced in the its FRCP 26(a) initial disclosure pleading. As stated in the Declaration of Rocky Mountain Eggs, Inc.'s counsel (**Exh. 1**), numerous requests for a complete copy of any insurance policies have been made to Shepherd's via its counsel. However, despite these attempts to resolve this discovery issue without court intervention, Shepherd's has not complied with the request and produced the insurance policies that are required by FRCP 26(a).

## II. Proposed Resolution of Discovery Dispute

The Court should enter a decision requiring Shepherd's & Sons Poultry Farm, Inc. to immediately comply with the requirements of FRCP 26(a)(1)(A)(iv) and produce a complete copy of its liability and excess insurance policies, including all forms, declarations and endorsements.

### AFFIRMATION

#### Pursuant to NRS 239B.030

The undersigned hereby affirms that this document does not contain the Social Security number of any person.

DATED this 13<sup>th</sup> day of July, 2020.

THORNDAL ARMSTRONG  
DELK BALKENBUSH & EISINGER

By: /s/ Justin H. Pfrehm  
JUSTIN H. PFREHM, ESQ.  
Nevada Bar No. 7484  
6590 S. McCarran Blvd., Suite B  
Reno, Nevada 89509  
Attorneys for Defendant/Third-Party  
Plaintiff/Cross-Defendant  
ROCKY MOUNTAIN EGGS, INC.

**CERTIFICATE OF SERVICE**

Pursuant to FRCP 5(b), I certify that I am an employee of the law firm of Thorndal Armstrong Delk Balkenbush & Eisinger, and on this date, I caused the foregoing **DEFENDANT/THIRD-PARTY PLAINTIFF ROCKY MOUNTAIN EGGS, INC.'S NOTICE OF DISCOVERY DISPUTE** to be electronically filed with the United States District Court's electronic filing system (CM/ECF) which will send a notice of electronic filing to the following:

**Craig M. Murphy, Esq.  
Murphy & Murphy Law Offices  
8414 W. Farm Road, Suite 180, Box 207  
Las Vegas, NV 89131  
Attorney for Plaintiff**

**Timothy Hunter, Esq.  
Ray Lego & Associates  
7450 Arroyo Crossing Pkwy, Suite 250  
Las Vegas, NV 89113  
Attorney for Defendant  
Jacobs Entertainment, Inc., and Gold Dust Elko**

**Vieterbo L. Valera, Esq.  
P.K. Schrieffer, LLP  
100 North Barranca St., Ste. 1100  
West Covina, CA 91791**

**Ryan Dennett, Esq.  
Dennett Winspear, LLP  
3301 North Buffalo Drive, Ste. 195  
Las Vegas, NV 89129**

**M. Caleb Meyer, Esq.  
Christina Mundy-Mamer, Esq.  
Messner Reeves, LLP  
8945 W. Russell Road, Ste. 300  
Las Vegas, NV 89148**

DATED this 13<sup>th</sup> day of July, 2020.

/s/ Jennifer Livermore  
An employee of Thorndal Armstrong  
Delk Balkenbush & Eisinger

**EXHIBIT 1 –  
“Declaration in Support of Defendant/Third-Party  
Plaintiff Rocky Mountain Eggs, Inc’s  
Notice of Discovery Dispute”**

**EXHIBIT 1 –  
“Declaration in Support of Defendant/Third-Party  
Plaintiff Rocky Mountain Eggs, Inc’s  
Notice of Discovery Dispute”**

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**UNITED STATES DISTRICT COURT,  
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JACOBS ENTERTAINMENT, INC., a  
Delaware Corporation; ROCKY MOUNTAIN  
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DOES 1 through 10, inclusive; and ROE  
ENTITIES 1 through 10, inclusive,  
Defendants.

Case No.: 3:19-cv-00153-RCJ-CBC

**DECLARATION IN SUPPORT OF  
DEFENDANT/THIRD-PARTY  
PLAINTIFF ROCKY MOUNTAIN EGGS,  
INC.'S NOTICE OF DISCOVERY  
DISPUTE**

I, JUSTIN PFREHM, hereby declare under penalty of perjury of the laws of the State of Nevada that the following is true and correct:

1. My office is attorney of record for Rocky Mountain Eggs, Inc., a Defendant/Third-Party Plaintiff in this case.
2. All parties in this case made their respective initial disclosures that are required by FRCP 26(a). Third-Party Defendant, Shepherd's & Sons Poultry Farm, Inc. made its initial disclosure on 2/19/20. Shepherd's & Sons Poultry Farm, Inc.'s initial disclosure contained the declarations to its relevant liability and excess insurance policies, which were apparently issued by Palomar Insurance Corporation. However, Shepherd's & Sons Poultry Farm, Inc.'s disclosure did not include a complete copy of those insurance agreements/policies.

1 3. On several occasions since receiving Shepherd & Sons Poultry Farm, Inc.'s initial  
2 disclosure the undersigned contacted Viterbo Valera, Esq., the attorney for Shepherd's & Sons  
3 Poultry Farm, Inc. and advised him of the necessity of his client producing complete copies of its  
4 insurance policies pursuant to FRCP 26(a)(1)(A)(iv). Some of those communications included  
5 emails were sent to Mr. Valera on 5/20/20 and 6/2/20.

6 4. I spoke directly to Mr. Valera, Esq., on 6/17/20 and we discussed the issue of his client's  
7 insurance policies not yet being produced. I told Mr. Valera that I would give him and his client  
8 until 7/1/20 to produce the requested insurance policies but if the policies were not produced by  
9 that date then I would file a notice renewing the motion to compel that had previously been filed  
10 on behalf of Rocky Mountain Eggs, Inc. and which was denied, without prejudice, by the Court  
11 by Order dated 6/15/20.

12 5. Mr. Valera e-mailed me on 7/2/20 and advised that he still did not have the requested  
13 insurance policies and he would update me. I spoke with Mr. Valera again on the telephone on  
14 7/9/20 and told him I had waited as long as I could wait for the policies and if I did not receive  
15 the policies by the end of the day on 7/10/20 then I would renew the motion to compel.

16 6. I did not receive the insurance policies from Mr. Valera by the end of the day on 7/10/20.  
17 Nor did I receive any communication from him about the status of his client's production of the  
18 insurance policies.

19 7. Despite the undersigned's numerous requests for production of these insurance  
20 agreements/policies—both in writing and orally-- Shepherd's & Sons Poultry Farm, Inc. has  
21 never complied with FRCP 26(a)(1)(A)(iv) by producing complete copies of "any insurance  
22 agreement under which an insurance business may be liable to satisfy all or part of a possible  
23 judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment."

24 8. Pursuant to FRCP 37(a), LR IA 1-3(f) and for the reasons stated in this Declaration, I  
25 hereby certify that I have made a good faith effort to confer with counsel for Third-Party  
26 Defendant, Shepherd's and Sons Poultry Farm, Inc. about the matters contained in this  
27 Declaration, as described herein, and have been unable to resolve the matter satisfactorily  
28 without court intervention.

Executed: July <sup>13<sup>th</sup></sup>, 2020.



JUSTIN PFREHM